

§ 2700.27

he contests the proposed penalty assessment. A person who wishes to contest a proposed penalty assessment must provide such notification regardless of whether the person has previously contested the underlying citation or order pursuant to § 2700.20. The Secretary shall immediately transmit to the Commission any notice of contest of a proposed penalty assessment.

[71 FR 44207, Aug. 4, 2006]

§ 2700.27 Effect of failure to contest proposed penalty assessment.

If, within 30 days from the receipt of the Secretary's proposed penalty assessment, the operator or other person fails to notify the Secretary that he contests the proposed penalty, the Secretary's proposed penalty assessment shall be deemed to be a final order of the Commission not subject to review by any court or agency.

§ 2700.28 Filing of petition for assessment of penalty with the Commission.

(a) *Time to file.* Within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty.

(b) *Contents.* The petition for assessment of penalty shall:

(1) List the alleged violations and the proposed penalties. Each violation shall be identified by the number and date of the citation or order and the section of the Act or regulations alleged to be violated.

(2) Include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act, 30 U.S.C. 820(i), unless a single penalty assessment has been proposed under 30 CFR 100.4.

(3) State whether the citation or order has been contested pursuant to § 2700.20 and the docket number of any contest proceeding.

(4) Advise the party against whom the petition is filed that an answer to the petition must be filed within 30 days pursuant to § 2700.29 and that the answer must be filed regardless of whether the party has already filed a notice of contest of the citation, order,

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or proposed penalty assessment involved.

(c) *Attachments.* A legible copy of each citation or order for which a penalty is sought shall be attached to the petition for assessment of penalty. If a legible copy is not available, the petition for assessment of penalty shall set forth the text of the citation or order.

[58 FR 12164, Mar. 3, 1993, as amended at 71 FR 44207, Aug. 4, 2006]

§ 2700.29 Answer.

A party against whom a petition for assessment of penalty is filed shall file an answer within 30 days after service of the petition for assessment of penalty. An answer shall include a short and plain statement responding to each allegation of the petition.

§ 2700.30 Assessment of penalty.

(a) In assessing a penalty the Judge shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. 820(i), and incorporate such determination in a written decision. The decision shall contain findings of fact and conclusions of law on each of the statutory criteria and an order requiring that the penalty be paid.

(b) In determining the amount of penalty, neither the Judge nor the Commission shall be bound by a penalty proposed by the Secretary or by any offer of settlement made by a party.

§ 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

(b) *Motion accompanied by proposed order.* In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c),